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American Samoa

Working paper prepared by the Secretariat

Contents

		Paragraphs	Page
I.	Background information	1–3	2
II.	Constitutional, legal and political issues	4–10	2
III.	Budget	11–14	4
IV.	Economy	15–27	5
	A. General	15–17	5
	B. Agriculture and fisheries	18–20	6
	C. Tourism	21–22	6
	D. Transport and communications	23–26	7
	E. Water, sanitation system and utilities	27	8
V.	Social conditions	28–35	8
	A. Labour	28–30	8
	B. Education	31–33	9
	C. Public health	34–35	10
VI.	Environment	36–37	10
VII.	Relations with international organizations and entities	38–40	11
VIII.	Future status of the Territory	41–46	11
	A. Position of the territorial Government	41–43	11
	B. Position of the administering Power	44–45	12
	C. Consideration by the United Nations	46	12

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I. Background information

1. American Samoa[1] is located in the South Pacific approximately 3,700 kilometres south-west of Hawaii and 4,350 kilometres north-east of Australia. It consists of seven islands (Tutuila, Aunuu, Ofu, Olosega, Tau, Swains and Rose) and several lesser islands belonging to the Samoan group. The total land area is 197 square kilometres, about 70 per cent of which is covered by dense forest. Tutuila, where Pago Pago, the capital, is located, is the largest island; it constitutes 70 per cent of the total land area and is home to 95 per cent of the population.[2]

2. It is generally believed that the Samoan archipelago was settled some 3,000 years ago by people migrating into the Pacific from South-East Asia. The Dutch were the first Europeans to find these islands, in 1722. Some settlers came to the islands in the early 1800s, followed by missionaries in 1830. By the late 1800s, internal strife among the chiefs and struggles among the colonial Powers of Germany, Great Britain and the United States of America led to a period of instability. Deeds of cession of these islands to the United States were formally accepted by means of an Act of Congress on 20 February 1929. Pursuant to this Act, the native inhabitants were given the status of American nationals. The Act provided for an American Samoan Government with all civil, judicial and military powers to be vested in a designee of the President of the United States. As the American interest in the area had been mainly military, the Territory was placed under the jurisdiction of the United States Navy. In 1951, an executive order transferred authority over the Territory to the Department of the Interior.

3. According to Central Intelligence Agency estimates for July 2005, the population of American Samoa was 57,881, of which 51.2 per cent was male and 48.8 per cent was female. The median age is 22.8 years. Ethnically, the population breaks down into 89 per cent Samoan/Polynesian, 2 per cent Caucasian, 4 per cent Tongan and 5 per cent others. Of the native population, 56.7 per cent were born in American Samoa, 6.3 per cent were born in the United States and 36.1 per cent were foreign born. Some 90.6 per cent of the population 5 years of age and older speaks Samoan, which is closely related to Hawaiian and other Polynesian languages, and English; and 2.9 per cent speaks English only. Half of the population is Christian Congregationalist (50 per cent), followed by Roman Catholic (20 per cent) and Protestant and others (30 per cent).[3] It is estimated that more Samoans live abroad than in American Samoa, some 70,000 Samoans live in the United States, and of that number 20,000 live in Hawaii.[4]

II. Constitutional, legal and political issues

4. American Samoa is a Non-Self-Governing Territory under the administration of the United States of America. The Constitution adopted in 1960 was revised in 1967 and was subsequently amended in 1970 and 1977. Any amendments or modifications to the Constitution of American Samoa (as approved by the Secretary of the Interior) may be made only by an act of the United States Congress. In 1978, the people of American Samoa for the first time elected their own Governor. The current Governor is Togiola T. A. Tulafano, who was elected in 2004. His term will expire in November 2008, when the next elections are held. Since 1981, American Samoa has also elected, by direct vote, a non-voting delegate to the United States House of Representatives, who can, however, vote in committees. The current

delegate is Congressman Eni F. H. Faleomavaega, who is serving his ninth consecutive term. In December 2005, the Congressman started his campaign for re-election in the 2006 general elections.[5]

5. As American Samoa is an "unincorporated and unorganized" Territory of the United States, not all provisions of the United States Constitution apply. Residents of American Samoa are not United States citizens. They cannot vote in the United States general election but are permitted to participate in presidential primaries and caucuses. They are United States nationals who can freely enter the United States and work or reside anywhere they choose.

6. The Constitution of American Samoa provides for separate executive and legislative branches and an independent judiciary. The executive branch comprises a Governor and a Lieutenant-Governor elected for four-year terms by universal adult suffrage. All American Samoans over 18 years of age are eligible to vote. The Governor is responsible for executing both American Samoan and United States laws and has veto power with respect to legislation passed by the Fono. The Fono is a bicameral legislature, which comprises an 18-member Senate whose members are chosen by 14 traditional tribal councils, and a 21-member House of Representatives, 20 of whom are elected by popular vote and one is appointed as a non-voting delegate from Swains Island. Only matais (or chiefs) can become senators. Senators hold office for a four-year term and representatives for a two-year term. The Fono may pass laws with respect to all local affairs, provided its laws are not inconsistent with United States laws in force in the Territory or with United States treaties or international agreements.

7. Currently, preparations are under way in the Territory for the holding of a constitutional review (see paras. 41-43). On a related matter, in October 2005, Congressman Faleomavaega introduced in the United States House of Representatives a proposal to repeal the current requirement whereby any amendment or modification to the Territory's Constitution may only be made by an act of the United States Congress.[6] The Congressman has stated that such a step is vital to the Territory's political development as it would allow more local control over the governing process.[7]

8. The judiciary system consists of the High Court, with the Chief Justice and the Associate Justices appointed by the Secretary of the Interior, and the local District and Village Courts, with the judges appointed by the Governor. The current Chief Justice is the first native Samoan to be appointed to the position. The High Court is separated into Appellate, Trial and Land and Titles divisions. Since American Samoa is not part of a United States federal judicial district or circuit, there are no statutory provisions for appealing decisions of the High Court. American Samoa laws are textually identical to United States laws ("mirror laws"), where all references to the United States are substituted by references to American Samoa.

9. The question of whether federal laws are applicable to the Territory and whether decisions affecting numerous issues in the Territory can be taken at the federal level has been widely discussed at the federal and local levels for several years. On the electoral front, Congressman Faleomavaega has made proposals to change federal legislation to allow for plurality vote instead of majority vote in territorial elections. In 2004, the United States President signed into law a bill allowing for the American Samoan delegate to be elected by plurality rather than majority if the territorial Legislature so decides (see A/AC.109/2005/15, para. 10).

In a broader context, recently American Samoa's House of Representatives decided not to support a bill introduced by Congressman Faleomavaega on federal court jurisdiction for fear it would subject the Territory's land tenure system to federal court review.[8]

10. With respect to immigration, American Samoa has its own laws, and entry into the Territory by foreigners is not the same as entry into the United States (in contrast with Guam, where United States immigration laws apply).[9] According to a resolution passed in 2002 by the House of Representatives of American Samoa, children born in the Territory to foreign parents become citizens of either the mother's or the father's country of origin, not United States nationals.[10] In 2003, the new Immigration Law of American Samoa came into force, changing eligibility requirements for permanent resident status in certain categories, and giving the Attorney General, instead of the Government-appointed board, full authority over granting eligibility. This change allows many individuals who reside in the Territory for a long period of time to acquire permanent resident status.[11]

III. Budget

11. The main business of the Government of American Samoa is the management and distribution of the territorial budget, which consists primarily of federal grants in aid and capital subsidies allocated annually through the Department of the Interior, and locally generated revenue. In the Territory's traditional communal system, leaders are responsible not only for the preservation of the social order but also for the economic welfare of the extended family. The federal Government underwrites most of the cost of preserving this system. This affiliation allows the United States to have access to and use of the Territory for defence and other purposes.

12. In recent years much attention has been focused on the need to improve the financial accountability of the Territory. At the start of 2005, the Governor stated that measures undertaken during the previous eight years by his predecessor and continued by him to improve the Territory's financial status through fiscal reform had paid off. Government departments had cut and tightened spending, and revenue collection had greatly improved, especially at the Customs Office and Tax Division. Thus, the Government was beginning 2005 with a surplus of $4 million.[12] In June 2005, however, the Government revised its estimates and forecast a shortfall by the end of the fiscal year, inclusive of the previously reported $4 million surplus, with projected expenditures for 2005 standing at $77.5 million, and projected revenues at $76.6 million. Strict spending controls were recommended to counteract this trend.[13] The annual budget of the Government of American Samoa for fiscal year 2006, which started on 1 October 2005, was $254 million. Of that amount, $88 million came from special federal grants and $73 million from Enterprise Funds; $58 million came from local revenues, with taxes providing $48.7 million, and $33.2 million from grants-in-aid and capital improvement projects funded by the Department of the Interior.

13. Meanwhile, throughout the reporting period the federal Government continued to call for greater financial accountability. In January 2005, the investigative branch of the United States Congress, the General Accounting Office, reported that instances of theft and fraud by officials of the Government of American Samoa had

weakened the accountability of most federal grants awarded to the Territory and recommended that it be declared a "high-risk grantee". The Department of the Interior argued that many of the measures that came with a high-risk declaration were already being applied in the Territory.[14] In May 2005, the Department reported that it had awarded the territorial Government $208,000 to hire consultants to assist in completing financial statements and audits for the past two fiscal years.[15] Further, in its semi-annual report to the United States Congress released on 1 December 2005, the Office of the Inspector General of the Department of the Interior recommended that an active partnership was needed between the territorial Government and the Office of Insular Affairs in order to break what it referred to as "the cycle of fiscal crisis" in American Samoa.[16]

14. During his state of the Territory address, delivered to the Fono on 9 January 2006, the Governor stated that the Government was determined to avoid the miss-steps that had "engendered the ire of [their] United States counterparts in years past". Accountability and transparency were increasing and, for the first time since 1991, American Samoa would be current with its single audit compliance by the end of January 2006. As a result of austere practices, Department of the Interior funding for capital improvement projects would be increased from $9.5 million in 2006 to $10.5 million in 2007.[17]

IV. Economy

A. General

15. About 93 per cent of American Samoa's economy is based on United States federal expenditures and the canning industry. Tuna fishing and processing are the backbone of the private sector (see paras. 19 and 20 below). The remaining 7 per cent of the economy stems from a small tourism industry and a few businesses that sell exclusively to the local market. The largest trading partner of American Samoa is the United States, followed by New Zealand, Australia and Fiji. Some 90 per cent of goods and products are imported, including food and petroleum products, machine parts, building materials, textiles and clothing. Attempts by the Government to develop a larger and broader economy are constrained by the Territory's remote location, limited transportation and devastating hurricanes, as well as competition from neighbouring islands with lower wage levels and from larger, more efficient businesses in the United States. These conditions have led some 70,000 Samoans to seek livelihoods outside the Territory (see para. 3).[4]

16. In September 2004, the Department of the Interior organized a conference to stimulate economic development in American Samoa. The Secretary of the Interior highlighted some of the Territory's competitive advantages, including duty-free access to the United States, an English-speaking workforce of over 17,000 people, locally controlled immigration and well-developed infrastructure (satellite telecommunications and Internet capabilities and established industrial parks). He also drew attention to business opportunities in export-oriented manufacturing (such as tuna processing) and professional services (management contracts, workforce-management training and technology consulting services), ecotourism and conference tourism, tax exemption incentives and international banking services.[18]

17. In January 2006, the Governor stated that American Samoa's economy was growing, with the gross domestic product up by 3 per cent from 2003 figures. He also reported a total of 3,157 business applications processed in 2005, an increase of 4.5 per cent over applications in 2004. In addition, he said there was healthy competition for goods and services, with the Territory spending over $14 million in 2005 from 2,000 local vendors.[17]

B. Agriculture and fisheries

18. Agriculture, hunting and forestry employ less than 3 per cent of the population and provide little surplus for export. The most important crops include. taro, coconuts, bananas, oranges, papayas, breadfruit and yams. According to the Department of Agriculture, at present, the Territory covers 95 per cent of its food needs through imports.

19. The fishing industry constitutes 90 per cent of the Territory's economy and employs one third of its workforce. American Samoa's tuna industry is the fourth largest in the world, with tuna processed in the StarKist and Chicken of the Sea canneries accounting for 97 per cent of the Territory's exports and meeting 20 per cent of the United States market. However, the future viability of this industry in the Territory depends on its continued tax exemption and competitive wage scales. As previously reported, the Government is concerned that the phasing out of tariff barriers to other tuna-processing countries through the Andean Trade Preference Act and the Association of Southeast Asian Nations could devastate the Territory's tuna industry. During the reporting period, the Government and the American Samoa delegate to the House of Representatives continued to lobby for the extension of the Internal Revenue Service section 936 federal tax benefits. On 8 February 2005, Congressman Faleomavaega introduced legislation to extend this tax benefit to American Samoa's tuna industry for 10 additional years.[19]

20. In his 2006 state of the Territory address, the Governor noted that there remained excellent potential for the local fishing industry. Regarding section 936, he said that an alternative package presented to the United States Congress was also being circulated to canneries. This package encompassed the portions of the tax provision most beneficial to canneries but also allowed for its wider application to other businesses interested in locating to the Territory. The Governor noted that he had invited leaders and staff of the Senate Energy and Natural Resources Committee and others to the Territory to see first hand what a huge role section 936 played in its development.[12]

C. Tourism

21. According to the Governor, American Samoa is on the verge of privatized tourism that is sector-based and community responsive. In 2005, cruise ships brought some 6,500 visitors to the Territory, which increased short-term seasonal employment and opportunities for sales of local arts and handicrafts, but land-based tourism is still very limited. In 2005, an Ecotourism Plan for American Samoa was prepared by the University of Hawaii's Pacific Business Center Program and its School of Travel Industry Management, to attract a new type of visitor. According to the Ecotourism Plan for American Samoa report, the Territory has an estimated

visitor room inventory of 449,406 on Tutuila, and 43 on other islands. The 181-room Government-owned Rainmaker Hotel is in disrepair and is currently inactive.[20]

22. In his 2006 state of the Territory address, the Governor noted that another hotel, Sadie's by the Sea, would add 42 rooms to the local accommodation capacity. He also confirmed that ecotourism was being developed through partnerships between the Tourism Office, local businesses and organizations such as the Pago Pago Visitors Association.

D. Transport and communications

23. There are approximately 150 kilometres of paved roads and 200 kilometres of secondary roads in American Samoa. The highway system is generally in poor shape owing to the effect of hurricanes, the age of the roads and inadequate maintenance. The Governor reported that the Department of Public Works had recently completed projects worth $2.4 million, including the building of roads to Utulei and Vaitoji villages and the repair of the Futiga-Leone Road. Further road works are planned in 2006.

24. Pago Pago harbour is an all-weather deep-draught harbour, one of the best natural deepwater harbours in the South Pacific Ocean and of strategic importance in the region. The main dock is 1,000 feet long, handling ships of up to a 32-foot draught. Pago Pago harbour provides the full complement of equipment and facilities and has a ship repair facility with a 3,000-ton marine railway.[3]

25. There are four airports in the Territory, situated on the islands of Tutuila, Ofu, Olosega and Ta'u. Pago Pago International Airport is owned and operated by the territorial Government. In October 2005, the United States Federal Aviation Administration awarded American Samoa $7.4 million for airport improvements. Of that amount, $6.4 million are for improvements at Pago Pago, including the construction of an aircraft rescue and fire fighting training facility, three aircraft rescue vehicles and an update of the airport's master plan study. The Territory's main airport is regularly served by a number of airlines that link American Samoa with Hawaii and the United States mainland and other countries in the South Pacific. Hawaiian Air provides direct air service to Honolulu. Air New Zealand and Air Pacific provide air service to New Zealand, Australia, Fiji, Vanuatu, Tonga, New Caledonia, Tahiti and the Cook Islands. Samoa Air flies to Tonga and other destinations and is available for charter. Samoa Air makes several flights a day between Pago Pago and Apia, the capital of Samoa. In addition, a new international airline, Polynesian Blue, began operations in November 2005. The result of the merger between Samoa's flag carrier Polynesian Airlines and Virgin Blue, Polynesian Blue is expected to operate between Samoa, American Samoa and Sydney, Australia.[21]

26. The Territory has four radio stations and a Government-owned television station, two privately owned newspapers, a Government-owned American Samoa TeleCommunications Authority and the privately owned Blue Sky Communications. In 2005, the Territory entered the North American telephone numbering plan, resulting in some of the lowest long distance telephone rates ever recorded. In addition, an equal access measure allowed American Samoans to choose their favourite long-distance telephone carrier, leading to both the American Samoa

TeleCommunications Authority and Blue Sky lowering their rates for Internet, long-distance communications and local wireless.

E. Water, sanitation system and utilities

27. The American Samoa Power Authority (ASPA), which is Government-owned, provides water, wastewater, solid-waste and electric services to customers on five of the seven islands. ASPA provides safe drinking water to 90 per cent of the Territory from 57 wells, with the remaining part being serviced by outer-village systems. In June 2005, a report published by the United States Environmental Protection Agency indicated that American Samoa would need to spend more than $30 million on infrastructure to ensure safe drinking water in the future and to protect public health. Regarding electricity production, the Governor has highlighted the negative aspects of the Territory's dependence on petroleum. He has directed the territorial Energy Office and American Samoa Power Authority to determine the feasibility of alternative energy production such as wind power and ocean thermal plants.

V. Social conditions

A. Labour

28. Statistics from 2000 place the per capita income of American Samoa at $8,000 and the unemployment rate at 6 per cent.[3] The total labour force consists of over 17,000 workers, about one third of them aliens, mostly from Samoa. The largest employer is the cannery industry which provides over 5,000 jobs, followed very closely by the Government of American Samoa, which has another third of the workforce on the payroll. The remaining one third of workers is in the secondary economy, which provides goods and services to the canneries and consists mainly of retail and service enterprises.

29. American Samoa is one of the two United States Territories in which employers are allowed to pay workers less than the mainland minimum wage to ensure compatibility with the prevailing cost of living. Wages in the Territory are set not by federal law but by recommendation of a special United States Department of Labor committee that reviews economic conditions every two years and establishes minimum wages by industry under the Fair Labor Standards Act. As of October 2003, the Department of Labor guaranteed the minimum hourly wage for Government employees at $2.77, for fish canning and processing at $3.26 and for shipping and transportation at $4.09.[22] In his state of the Territory address in January 2005, the Governor announced that he would submit legislation to the Fono to fund a salary increase for Government workers making less than $40,000 a year to keep up with the high cost of living in the Territory. In June 2005, testifying before the United States Special Industry Committee, Congressman Faleomavaega announced his support for a minimum wage increase in American Samoa, especially for cannery workers, and called upon StarKist to be fair to its workers.[23]

30. As reported in previous working papers, a 1996 Government-sponsored attempt to launch a garment manufacturing sector in the Territory involving foreign workers led to a class-action suit and a case against the owner of Daewoosa garment factory. After a lengthy legal process, on 23 June 2005 the United States Department

of Justice in Washington, D.C., announced the sentencing of the owner of the Daewoosa factory to 40 years in prison for his role in holding over 200 Chinese and Vietnamese garment workers in forced servitude. This case was prosecuted by attorneys from the Criminal Section of the Justice Department's Civil Rights Division and was investigated by the Honolulu regional office of the Federal Bureau of Investigation. The victim witness coordinator in the United States Attorney's Office also assisted with the case.[24] This case has become key in testing the applicability of United States federal jurisdiction within the High Court of American Samoa.

B. Education

31. Education is compulsory from 6 to 18 years of age. The educational system in American Samoa is broadly based on the United States pattern. There are 30 public primary, 6 private and 160 village schools. American Samoa Community College offers two-year degree courses in arts and sciences and programmes offering certificates of proficiency in vocational and clerical skills, business and nursing. San Diego State University offers bachelor's and master's degree programmes in Tutuila, which enable students to obtain an advanced college degree without moving off-island.

32. Despite a high literacy rate of 97 per cent, American Samoa recently received the lowest average score in the National Assessment of Educational Progress administered nationwide by the federal Department of Education and was also given a "high risk" status regarding the use of educational funds. In January 2005, the Governor noted that the "high risk" status had been addressed with auditing policies to win back the confidence of the Department of Education. He also announced the addition of new classrooms to accommodate growing elementary school enrolment, improvements in high school campuses and facilities, and surplus funds to increase teachers' wages. In his 2006 state of the Territory address, the Governor noted that test scores for the Territory's children were improving in each subject area. He added that the local Department of Education was developing specially tailored standards-based tests to measure achievement in relation to the curriculum set forth locally. He noted that $1 million had been invested in teacher scholarships and $463,000 made available to encourage students to attain advanced degrees. Furthermore, efforts were being made to invest in technology through the Pacific Information and Communications Technology Academy, established in 2005, and the first long-distance training being offered by the University of Hawaii Telecommunications Information Policy Group in collaboration with educational centres in American Samoa.

33. The Society for Indigenous Education in American Samoa is planning to open the first Samoan language university, Amosa o Savavau, in 2006. Samoan is the first language of most local students. The programmes are expected to improve the performance of students who are presently taught in the English language, and will offer classes in economics, Samoan speech composition, language acquisition and language development.[25]

C. Public health

34. Life expectancy in the Territory is 75.84 years, with male life expectancy at 72.27 years and female life expectancy at 79.62 years. Most social programmes including those related to public health, are funded by the federal Government. The main hospital in the Territory, the Lyndon Baines Johnson (LBJ) Tropical Medical Center, has 140 beds and a staff of 25 physicians. Medical, dental and pharmaceutical services in the Territory are available 24 hours a day. For serious cases, off-island treatment, including hospitalization in Guam, Hawaii or the United States mainland, is provided.

35. In response to a critical shortage in medication at the Medical Center, the Governor agreed, in March 2005, to use special funds to provide $500,000 to meet the crisis. In December 2005, the United States House and Senate passed a bill to significantly increase Medicaid payments for the United States Territories. American Samoa will receive an increase of $2 million for fiscal year 2006 and $4 million for fiscal year 2007. American Samoa's Medicaid funding will double by 2008. This bill was in response to a White House initiative on Asian Americans and Pacific Islanders and was part of the American Medical Association's Commission to End Health Care Disparities.[26] In January 2006, the Governor stated that the American Samoa Medical Center had received $1 million in flood insurance payments, which was used to fund much needed autoclave to burn biohazardous waste produced by the hospital. Other capital improvements for the hospital included $2 million for safety upgrades and additional housing.[17]

VI. Environment

36. According to the World Wildlife Fund, American Samoa contains one of the 10 most vulnerable forests in the world and only 0.2 per cent of the forest is protected. The Forest Service of the United States Department of Agriculture, in partnership with the territorial Government, has been implementing a number of programmes aimed at promoting the health and productivity of the Territory's forest lands. These programmes are focused on public education and tree planting, agroforestry, water resources, coastal stabilization, community beautification, late successional rainforest tree species, wood products, wildlife and conservation practices. In 2002, the Government of American Samoa bought 2,872 acres of forest from Salelologa village, an area rich in biodiversity, and in August 2004, the Minister for Natural Resources and Environment announced that it would become a national park.[27] To help mitigate the effects of human use, the American Samoa Coastal Management Program was established for the coastal zone, which includes all land (126 miles of coast) and sea within 3 miles of the shoreline.

37. Hurricanes and tropical storms pose a great threat to American Samoa. The typhoon season runs from December to March. Normally the islands are not on the storm track. However, in the past 10 years, the Territory has been affected by the El Niño phenomenon.[2] Federal disaster funds were made available after the Territory was struck from 15 to 21 February 2005, by high winds, high surf and heavy rainfall associated with tropical cyclone Olaf. The Federal Emergency Management Agency provided assistance for replacement of disaster-damaged facilities.[28] In November 2005, the federal Government directed the Department of Homeland Security to allocate $468,716 to American Samoa under the fiscal year 2006 emergency

management performance grant programme to allow the Territory to respond more effectively to local emergencies.[29]

VII. Relations with international organizations and entities

38. American Samoa is a member of several regional organizations, including the South Pacific Commission, the Pacific Basin Development Council, the Pacific Tuna Development Foundation, the Pacific Islands Association, the Asian-South Pacific Bureau of Adult Education, the Pacific Asia Travel Association, the South Pacific Regional Environment Programme and the Council of Pacific Arts. It also belongs to such United States organizations as the National and Western Governors' Conferences. The Government of American Samoa has signed memorandums of understanding with the Governments of Samoa and Tonga on mutual economic cooperation and has sent trade missions to a number of countries in the Pacific region.

39. American Samoa belongs to various regional bodies of the United Nations system, including the World Health Organization (WHO), the Regional Office for the Western Pacific and the WHO Pacific Regional Centre for the Promotion of Environmental Planning and Applied Studies. The Territory has been an associate member of the Economic and Social Commission for Asia and the Pacific since 1988.

40. In October 2002, American Samoa joined the South Pacific Applied Geoscience Commission. The Territory is reportedly seeking assistance from the Commission in the development of its water resources and advice on reducing the risk of natural disaster.

VIII. Future status of the Territory

A. Position of the territorial Government

41. The Government of American Samoa delivered a message to the Special Committee at the regional seminar held from 17 to 19 May 2005 in Saint Vincent and the Grenadines.[30] Speaking on behalf of Governor Tulafono, Mr. Lelei Peau noted that the position of the people of American Samoa has been consistent with their desire to retain their political status with the United States. They were independent within a federalized system of self-governing States and Territories. Federal agencies and programmes were designed to bring a self-governing territory, such as American Samoa, together with other states and territories for their common good. They had self-determination over their own local affairs and worked with the federal Government on issues of collective importance, such as protection of ocean resources and foreign affairs.

42. He noted that American Samoa had made progress on the issue of self-governance and was in the process of calling for a constitutional review. The review budget had been submitted to the Fono and they were supportive of an open and free discussion of the political relationship between the Territory and the federal Government of the United States. Two issues needed to be clarified before conducting this constitutional convention: a clear definition by the Special

Committee of how self-determination was different from what American Samoa was doing, and a detailed process on what the Special Committee believed American Samoa needed to do to achieve self-governance different from what they were currently doing.

43. The representative noted further that the constitutional convention was a very important undertaking, as it would involve a broad range of American Samoan citizens, their status in the world community and their continuing status with the United States Government. The people must have ample time to understand and consider this issue and determine their political future. In the past, the American Samoa government had asked the United Nations to de-list the Territory as a "colony" of the United States. The outcome of the convention would further clarify what their future status should be in the eyes of the citizens and legislature of American Samoa. He asked the Special Committee to review the colonial issue, keeping in mind the wishes of the people directly impacted, and to support the upcoming constitutional convention.

B. Position of the administering Power

44. The United States has not expressed an official position at the United Nations regarding its non-self-governing territories since 9 December 2003, when a representative stated at the 72nd plenary of the fifty-eighth session of the General Assembly that its remaining Territories were already to a large extent self-governing (see A/58/PV.72). The representative said that for that reason the United States could not support the draft resolution (A/58/L.21) on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, because by adopting a narrow definition of decolonization, the draft resolution failed to take into account the complex reality of Non-Self-Governing Territories. For the United States, the very term "non-self-governing" seemed inappropriate for those who were able to establish their own Constitution, elect their own public officers, have representation in Washington, D.C., and choose their own economic path.

45. The United States was fully supportive when countries chose independence and was proud to welcome them as equal and sovereign partners. For Territories that did not choose independence, however, the United States also supported the right of people in those Territories to a full measure of self-government, including the rights to integration and free association. The United States expressed its view that the world encompassed a variety of peoples, places and political circumstances and that richness did not allow for just one path. It believed that a single standard of decolonization should not be applied to every Territory and called upon all Member States to respect the choices made by residents of Non-Self-Governing Territories.

C. Consideration by the United Nations

46. On 8 December 2005 the General Assembly adopted without a vote resolutions 60/117 A and B. Section I of resolution 60/117 B is devoted specifically to American Samoa.

Notes

[1] The information contained in the present working paper has been derived from published and Internet sources.

[2] www.fema.gov/regions/ix/amsamoa.

[3] www.cia.gov/cia/publications/factbook.

[4] See Pacific Business Center Program, University of Hawaii, American Samoa, Economic Environment at www.hawaii.edu/pbcp/services/servicearea/asamoa.htm.

[5] *Samoa News*, 21 December 2005, "Congressman Faleomavaega seeks re-election, already receiving contributions".

[6] ibid., 7 November 2005, "Effort to repeal US Congress approving local constitution".

[7] Press release, 9 February 2006, at www.house.gov/apps/list/press/as00_faleomavaega/hr4182hearingrequest.htm.

[8] *Pacific Magazine*, February 2006.

[9] Bank of Hawaii, 1997 Annual Economic Report: American Samoa.

[10] BBC Monitoring Asia Pacific, 27 September 2002.

[11] *Samoa News*, 4 February 2003.

[12] Office of the Governor, state of the Territory address at the joint session of the Fono, official press release, 10 January 2005.

[13] *Samoa News*, 27 June 2005.

[14] "Government faces being named a high-risk grantee", Pacific Notes, March 2005.

[15] News release, Office of Insular Affairs, 4 May 2005.

[16] Office of Insular Affairs, "Report to the United States Congress", 1 December 2005.

[17] Office of the Governor, state of the Territory address at the joint session of the Fono, official press release, 9 January 2006.

[18] Office of Insular Affairs, American Samoa Business Opportunities Report, September 2004, at www.businessopportunitiesconference.com.

[19] See Office of American Samoa Congressman, press releases, 21 October 2004 and 17 February 2005, at www.house.gov/faleomavaega.

[20] "American Samoa ponders tourism future", Pacific Island Report, *Samoa News*, 22 September 2005.

[21] Radio New Zealand International.

[22] United States Department of Labor, Wage and Hour Division, Employment Standards Administration, Labor.

[23] www.house.gov/apps/list/press/as00_faleomavaega, press release, 22 June 2005.

[24] United States Department of Justice, press release, 23 June 2005, at www.usdoj.gov/opa/pr/2005/June.

[25] *Samoa News*, 4 May 2005; and Radio New Zealand International, 12 June 2005.

[26] *Samoa News*, 2 May and 20 June 2005.

[27] Ibid., 30 August 2004.

[28] FEMA press release, 17 February 2005; and FEMA national situation report, 21 February 2005.

[29] United States House of Representatives press release, 16 November 2005.

[30] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 23* (A/60/23), chap. II, annex, para. 22.

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Guam

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Contents

		Paragraphs	Page
I.	Background information	1–3	3
	Geography and population	1–3	3
II.	Constitutional, legal and political issues	4–16	3
	A. General	4	3
	B. Constitutional structure	5–8	4
	C. Legal system	9–10	4
	D. Political parties and elections	11	5
	E. Political issues	12–16	5
III.	Budget	17–19	6
IV.	Economy	20–34	7
	A. General	20–22	7
	B. Primary economic sectors	23–25	7
	1. Agriculture and fisheries	23	7
	2. Manufacturing/industry	24	7
	3. Tourism	25	7
	C. Transport and communications	26–29	8
	D. Water system, sanitation and utilities	30–34	8
V.	Military issues	35–36	9

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VI.	Land issues	37–39	9
VII.	Social conditions	40–56	10
	A. Law and order	40	10
	B. Labour	41	10
	C. Education	42–46	10
	D. Public health	47–50	11
	E. Housing	51	12
	F. Immigration	52–55	12
	G. Human rights and related issues	56	13
VIII.	Environment	57–59	13
IX.	Relations with international organizations and entities	60–61	13
	A. United Nations system	60	13
	B. Regional organizations and entities	61	14
X.	Future status of the Territory	62–66	14
	A. Position of the territorial Government	62	14
	B. Position of the administering Power	63–65	14
	C. Consideration by the United Nations	66	14

I. Background information

Geography and population

1. Guam[1] is the southernmost and largest of the Mariana Islands in the Pacific, situated about 1,350 miles south of Tokyo and 3,700 miles west-south-west of Hawaii. It consists of a single island of approximately 212 square miles. It comprises two distinct geological areas of about equal size. The northern part of the island is a high coralline limestone plateau and the southern region is mountainous. Apra Harbour, which is located on the central western side of the island, is one of the largest protected harbours in the Pacific and is considered to be the finest deep water port between Hawaii and the Philippines. The capital city of Guam is Hagåtña, previously known as Agana.

2. When the first Spanish missionaries came to Guam late in the 17th century, it was inhabited only by the indigenous people of Chamorros. They are believed to be of Mayo-Polynesian descent. War and diseases introduced by the Europeans nearly annihilated them. Today, the Chamorros comprise over one third of the population and play an active role in the political and social life of the island. Guam has evolved into a multi-ethnic society.[2] According to the United States Census Bureau International Data Base, Guam's population for 2006 is 171,019. The ethnic and racial composition of the population was 37.1 per cent Chamorro, 26.3 per cent Filipino, 11.3 per cent other Pacific islander, 6.9 per cent white, 6.3 per cent other Asian, 2.3 per cent other ethnic origin or race, and 9.8 per cent of mixed origin.[3] English and Chamorro are the official languages. Among the important changes revealed in the 2000 census was a much slower population growth rate than in the previous decennial censuses. The sharp drop in population growth in the period from 1990 to 2000 is not the result of a large drop the natural increase. Rather, it seems to derive from Guamanians migrating to Hawaii and other states for employment opportunities.[4]

3. Most of the population is Christian, mainly Roman Catholic (90 per cent). Other major religious denominations are Baptist, Seventh-day Adventist, Latter-day Saints and Episcopalian. Most other religions have adherents in Guam, including Jehovah's Witnesses, Jews, Buddhists and Muslims.[5]

II. Constitutional, legal and political issues

A. General

4. Guam was administered by the United States Department of the Navy until 1950, when the United States Congress enacted the Guam Organic Act, which established institutions of local government and made Guam an organized Territory. Since then, the Territory has been administered by the Department of the Interior. Guam is an unincorporated Territory since not all provisions of the United States Constitution apply to the island. According to United States law, Guam, as an unincorporated Territory, is a possession of the United States but not part of the United States.

B. Constitutional structure

5. Guam has a locally elected Government, which comprises separate executive, legislative and judicial branches. Universal suffrage with respect to local elections applies to Guamanians 18 years and older. Guamanians are citizens of the United States, but they are not eligible to vote in United States presidential elections while resident in the Territory. The people of Guam elect a Governor, who serves a four-year term. The current Governor, Felix P. Camacho, assumed that post in January 2003. The Governor is responsible for the general supervision and control of the executive branch and submits an annual report to the United States Secretary of the Interior for transmission to Congress. The Governor may issue executive orders and regulations, recommend bills to the Legislature, make his views known to that body and veto legislation.

6. The people also elect 15 senators, who serve two-year terms in a unicameral Legislature. The Legislature may override the Governor's veto. Under the Organic Act of 1950, the United States Congress reserves the authority to annul any law enacted by the Guam Legislature.

7. In 1972, a new law gave Guam one non-voting delegate to the United States House of Representatives. The delegate, who serves a two-year term, may vote in committee but not on the floor of the House.

8. In February 2006, a bill was introduced in the Guam Legislature to expand its autonomy. Bill 259 enjoys wide bipartisan support and requests the United States Congress to allow the local Legislature to amend the provisions of the Organic Act relating to local government with a view to enabling the people of Guam to make their own decisions on island issues.[6] Meanwhile, Guam is in the process of downsizing its Cabinet. Governor Camacho has submitted to the Legislature a total of seven bills aimed at merging 20 agencies and eventually decreasing the size of the Cabinet from 55 to 12 departments.[7]

C. Legal system

9. The judicial system in Guam comprises both local and federal components. The local judicial system is made up of a Superior Court and a Supreme Court led by judges appointed by the Governor and confirmed by the Legislature. Local judges are subject to confirmation by the voters every six years. At the federal level, a District Court judge, appointed by the President of the United States, is the head of the United States District Court for Guam. In 1998, Congress adopted an amendment to the Organic Act of Guam allowing the Guam Legislature to elect its own Attorney General for a four-year term. Attorney General Douglas Moylan, who took office on 6 January 2003, is the Chief Legal Officer of the Government of Guam. The Office of the Attorney General provides legal services to the Government of Guam and is empowered with prosecutorial authority.

10. In October 2004, President Bush signed an amendment to the Organic Act that established the judiciary of Guam as an independent branch of the Government.[8] The resolution also confirmed the appellate jurisdiction and administrative authority of the Supreme Court of Guam over all inferior courts in the Territory, thereby effectively establishing a unified local judiciary. The Guam Delegate to the United

States Congress, Congresswoman Madeleine Bordallo, stated that the new law was "an important step forward for self-governance in Guam".[9]

D. Political parties and elections

11. Guam has two main political parties, the Republican Party and the Democratic Party, which are local chapters of the two main United States political parties. In November 2002, Guam held general elections. The Republican candidate, Felix Camacho, defeated former Congressman Robert Underwood by 4,500 votes and was elected Governor. On 2 November 2004, the Democratic candidate, Madeleine Bordallo, was re-elected as the Guam Delegate to the United States Congress.[10] In the vote for the 28th Guam Legislature, the Democrats lost their majority of nine seats and now hold six seats, while the Republicans won a majority of nine seats.

E. Political issues

12. Periodically, there have been moves in Guam to change the island's political status.[8] In a 1976 referendum Guamanians decided to maintain close ties with the United States, but also to begin negotiations to improve the Territory's status. In 1979, the people of Guam rejected a draft constitution by a margin of five to one, mainly on the grounds that the question of political status had to be resolved before a meaningful constitution could be drafted.[11] In a 1982 run-off referendum, 73 per cent of voters opted to pursue commonwealth status with the United States. According to the Commission on Self-Determination, established in 1984 to draft a commonwealth agreement, that status was intended to be an interim one, which would provide an opportunity for Guam to structure a better relationship with the United States.

13. In May 1986, the Commission on Self-Determination completed a draft Commonwealth Act, which, after a public education campaign, was submitted to an article-by-article vote on 8 August 1987 (see A/AC.109/1192, paras. 19-37). Voters approved the central proposal, but rejected articles empowering the Government of Guam to restrict immigration and granting the indigenous Chamorro people the right to determine the future political status of the Territory. In a further referendum in November 1987, both of those outstanding provisions were approved after they had been amended and rewritten. A summary of the main points in the draft Commonwealth Act is contained in the 2001 working paper (A/AC.109/2001/4).

14. Discussions between the Guam Commission on Self-Determination and the United States Government on the draft Commonwealth Act began again in 1989 and continued through 1997 without resolution (see A/AC.109/2000/6, paras. 19-22, A/AC.109/1192, paras. 19-37, and A/AC.109/2018, paras. 74-83). According to a statement made by the then Governor, Carl T. C. Gutierrez, to the House Resources Committee of the 105th Congress in October 1997, the position of the United States executive branch with regard to the draft Act has essentially been that it was unconstitutional insofar as it did not recognize the plenary authority of Congress over Guam.

15. In 1997, Guam Public Law 23-147 established a Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination. That Commission, in concert with a process of registration of

eligible voters organized by the Guam Election Commission, was to oversee the conduct of a vote on the Chamorro people's status preferences of independence, integration or free association, in accordance with international standards.

16. In 2000, the Guam Legislature provided the Guam Election Commission with the power to set the date of the decolonization plebiscite. The plebiscite was expected to ask the Territory's indigenous people to choose between statehood, independence or free association with the United States. The indigenous people are defined by law as persons or descendants of persons who were in Guam at the time of the United States ratification of the Treaty of Peace with Spain in 1898 and/or persons or descendants of persons who received United States citizenship pursuant to the Organic Act of 1950. The plebiscite would have been non-binding but would have set the course of any future discussions of political status with the administering Power. The vote, scheduled to take place on 2 November 2004, was postponed because eligible voters had not been identified and registered, and the issue has not been further addressed.

III. Budget

17. The budget of Guam comprises revenues received by the Government of Guam and federal grants generally, allocated to particular sectors through the Department of the Interior on an ad hoc basis. The Governor has the power to veto a budget bill, following which the bill is returned to the Legislature, which can either override the Governor's veto by a special majority or reconsider the bill. In 2004, the Government of Guam narrowly avoided a Government shutdown when the Legislature and the Governor experienced a serious impasse on the budget for the fiscal year 2005. At the time, the Governor signed the budget and urged lawmakers to work with the Administration during the fiscal year to adjust the budget based on the actual revenues collected.[12]

18. The federal spending proposed for Guam in the budget for the fiscal year 2006 is $131 million. In February 2006, President Bush proposed a budget of $426.3 million for 2007 to assist seven insular areas, including Guam.[13] According to the Office of Insular Affairs, the top two priorities for the insular areas continue to be the promotion of private sector economic development and the effort to ensure that there is proper accountability for the use of Federal funds.[14]

19. According to a recently created think tank, the Government of Guam is more than $400 million in debt. The Administration wants to pay the deficit by borrowing money on the bond market. Guam law allows the Governor to borrow as much as $418 million on the bond market, but the Attorney General has argued that additional borrowing will exceed the legal debt limit set under the Organic Act. Permanent and temporary increases in taxes and fees, job cuts, public hiring freezes and outsourcing are among the options proposed by the Administration to deal with the shortfall in revenue.[15]

IV. Economy

A. General

20. According to the Guam Economic Development and Commerce Authority, Guam's economy is 65 per cent dependent on tourism; 30 per cent, on the military; and approximately 5 per cent, on other industries.[16] The construction sector is also an important contributor to the economy, while the farming and fishing sectors are relatively well developed. Vegetables, citrus and tropical fruits, coconuts and sugar cane are grown and livestock, especially poultry, is raised. Manufacturing sectors include textiles and garment production, cement and plastics.[17]

21. Guam is a duty-free port and an important distribution point for goods destined for Micronesia. Re-exports constitute a high proportion of Guam's exports, which include petroleum products, iron and steel scrap, automobiles, tobacco, cigars, among others. Principal trading partners of Guam are Japan, the Republic of Korea, the United States of America, the People's Republic of China, the Federated States of Micronesia and Palau.[18] Most food and industrial goods are imported. According to The World Factbook of the Central Intelligence Agency,[3] Guam faces the problem of needing to build up the civilian economic sector to offset the impact of military expenditures.

22. According to the Bank of Hawaii, the gross national income of Guam in 2000 was $2,772.8 million, which was equivalent to $16,575 per capita income.[18] In 2001, however, almost a quarter of the population was estimated to be living below the poverty line.[3]

B. Primary economic sectors

1. Agriculture and fisheries

23. The agriculture and fisheries sector has played a small role in the economy of Guam, accounting for less than 1 per cent of total private sector employment. Horticultural development, aquaculture, small-scale aquarium fish trading and pearl farming were highlighted as potential business opportunities at a conference on business opportunities in Guam, held in 2004 by the United States Department of the Interior, Office of Insular Affairs.[19]

2. Manufacturing/industry

24. One of the major industries on Guam, and the third most important economic sector (after tourism and the public sector), is construction. Construction as a generator of employment remains significantly above average for the United States, although it had been declining during the last decade.

3. Tourism

25. Over the past 20 years, the tourist industry in Guam has grown rapidly, creating a construction boom for new hotels and the expansion of older ones. More than 1 million tourists visit Guam each year, with visitors from Japan making up almost 90 per cent of the total.[3] Over the reporting period, 1.2 million tourists came to Guam, close to the goal set by the Guam Visitors Bureau of attracting 1.3 million

visitors in 2005.[20] According to the Governor, the airport is investing more than $120 million to accommodate the growing number of visitors.[21] In order to further promote Guam's tourist industry, the Congressional Asian Pacific American Caucus worked with the Guam Delegate to the United States Congress to encourage the United States Department of Commerce to direct the focus of a $10 million "Visit the U.S.A." marketing effort in part towards Japan, rather than only towards the United Kingdom of Great Britain and Northern Ireland.[22]

C. Transport and communications

26. In 2005, the transport infrastructure of Guam comprised four airports, of which Guam's international airport is the most modern in the Western Pacific; 977 kilometres of roadways, almost all paved; and one port. In July 2005, the United States Government provided funding for specific projects in Guam, including $6.6 million for the reconstruction of three bridges across the Hagåtña River; $6 million for the construction of a new wharf and land reclamation on Cabras Island; and $400,000 for the Guam Mass Transit Authority to purchase handicap accessible buses and vans. Guam also received an additional $14.5 million out of the $36.4 million earmarked for the territorial highway programme.[23]

27. The Port Authority of Guam, which is a public corporation and an autonomous agency of the Government of Guam, administers the commercial port facilities at Apra Harbour. The port is a major trans-shipment centre of the western Pacific and is equipped to move containerized bulk and tuna cargo efficiently.

28. Guam serves as a major telecommunications hub for the Asia/Pacific rim. Guam has a modern digital telephone system, including cellular mobile service and local access to the Internet. The system is integrated with United States facilities for direct dialing, including free use of 800 numbers. In 2001, Guam was estimated to have in use 84,134 telephone main lines and 32,600 mobile cellulars. In 2002, there were 50,000 Internet users in the territory. Two private companies, RCA Global Communications and IT&E (the Internet service provider for Guam and the Pacific Region), handle cablegrams, facsimile and telex messages and overseas telephone calls in the Territory. The United States Postal Service handles mail delivery. Commercial mail delivery is also available through Federal Express, TNT and DHL.

29. Guam has one daily newspaper, a newspaper published three times a week, several weekly and monthly commercial publications, and military journals. There are four AM and seven FM radio stations, one broadcast commercial television station, one commercial cable television station, and one public broadcasting station. Guam is a major Pacific cable station. A new fiber optic cable now links the island with Hawaii, Japan, the Philippines, and Hong Kong, China.[2]

D. Water system, sanitation and utilities

30. Approximately 74 per cent of the water supply is provided by the Guam Waterworks Authority. The remainder is produced by the Air Force and Navy installations on Guam. The Government's water sources are groundwater and surface water (Ugum River). The Navy water source is a surface reservoir (Fena Lake) in the southern part of the island. The state of the water and sewerage system is poor.

31. Leaks are frequent, posing significant health and environmental problems and inhibiting development.[24] In December 2002, the United States Government filed a complaint against Guam Waterworks Authority and the Government of Guam for repeated violations of the federal clean water and safe drinking water acts.[25]

32. In November 2002 the island elected its first Consolidated Commission on Utilities. The Commission oversees the operations of the Guam Waterworks Authority and the Guam Power Authority.

33. In December 2005, the Commission decided to pursue a partial privatization of the island's sewerage system and voted to ask the Guam Waterworks Authority to come up with an assessment of a partial privatization plan for the other half of the agency, the drinking water facilities.[26]

34. In his State of the Island Address, on 22 February 2006, Governor Camacho announced that Guam had invested $108 million to upgrade its water and wastewater systems. His Administration was also improving the island's power system by placing parts of the system underground. In addition, the 2006 federal budget proposal included an increase of $1 million to strengthen core water and waste activities in the United States Territories and those Territories in a relationship of free association with the United States.[27]

V. Military issues

35. Guam was administered by the United States Navy until 1950, and remains the site of extensive United States naval and air force installations. Petroleum storage, munitions stowage, extensive communications facilities and other service industries that cater to the military establishment form the basis of the military infrastructure in Guam.

36. Following a decision of the United States Government in 2005 to realign United States Marine Corps capabilities in the Pacific region, approximately 15,000 United States military personnel and their families will be transferred to Guam from Okinawa over a period of six years. Three submarines are already based in Apra Harbour. Pacific Air Forces have committed to basing a Global Strike Task Force at Andersen Air Force Base on Guam. In his State of the Island Address, the Governor said that increased military activity would bring increased investment, more businesses and better jobs for the people of Guam.[21] In 2005, the United States Congress also passed a bill for military construction projects to be developed on Guam in 2006. The projects include $25.5 million for improvements at Alpha and Bravo Wharfs at the Naval Base, $15 million for new ammunition storage igloos at Andersen Air Force Base, $40.5 million for a new joint middle and elementary school at the Naval Base and other investments.[28] According to the Guam Delegate to the United States Congress, the United States Department of Defense authorized an additional $89.5 million for military construction projects in 2006.[29]

VI. Land issues

37. There are three categories of land-use ownership on Guam: private, the Government of Guam, and the United States Government. The Federal Government holds about 30 per cent of the total land area; the Government of Guam holds

approximately 25 per cent; while the remaining 45 per cent is privately owned. Private land ownership on Guam is not restricted on the basis of nationality or residency.[3] According to estimates in 2001, about 9 per cent of the land is arable.

38. As reported in previous working papers, the question of land use and ownership is a major and ongoing consideration on Guam. This question comprises two major issues: (*a*) the return of unused or underutilized lands held by the Department of Defense; and (*b*) the return of those lands to the original Chamorro landowners. In 1994, Congress passed the Guam Excess Lands Act (Public Law 103-339) to return 3,200 acres to the people of Guam. By early 2005, a total of 180 parcels of land benefiting 2,000 families had been returned, seven parcels more than the previous year.[30]

39. Recently, the United States Government has expressed concern over the turnover of properties at the former Naval Air Station in Tiyan to the original Chamorro landowners, saying that this could be a breach of the original agreement that turned over the Naval Air Station to the Government of Guam.[31] The Federal Government wants the local Government to build a highway on the property, portions of which the local Government has given back to the original landowners.[32]

VII. Social conditions

A. Law and order

40. During the review period, the Government of Guam received two federal grants from the United States Department of Justice for a total of $1,029,000 to support community efforts directed towards the development and implementation of effective, victim-centred law enforcement addressing violence against women, as well as providing direct services to victims of crime.[33] The Department of Justice also released to the Guam Department of Youth Affairs an amount of $247,700 to improve juvenile justice system infrastructure and operations in the Territory.[34] In addition, the Federal State Justice Institute awarded a $30,000 grant to assist the Guam Judiciary with reorganizing itself based upon Federal legislation.[35]

B. Labour

41. According to the Guam Department of Labor, the number of both private sector and government jobs on Guam increased by 590 from December 2004 to December 2005, reaching 57,990 registered jobs. Construction jobs, as well as jobs in the hotel business, services, transportation and utilities, finance, insurance and real estate increased in numbers.[36]

C. Education

42. Guam has an extensive public and private education system. The public education system includes the University of Guam, Guam Community College, four public high schools, seven middle schools and 27 elementary schools. The private system includes two business colleges, five high schools and several elementary schools, most of which are affiliated with Roman Catholic and Protestant religious

denominations. A new bill, the Guam Charter Schools Act, allowed the establishment of private charter schools independent from the Department of Education.[37] According to estimates in 1990, about 99 per cent of Guamanians over the age of 15 were literate.

43. The University of Guam offers master's degree programmes in education and public administration, operates a marine research laboratory, and has an extensive collection of Pacific and Micronesian historical documents and material at the Micronesian Area Research Center. The University of Guam is accredited by the Western Association of Schools and Colleges.[2]

44. In 2005, the United States Department of Education allocated over $546,000 to the Guam Community College and the University of Guam to increase the retention and graduation rates of low-income and first-generation college students, and college students with disabilities. The Department also awarded the Guam Department of Education $9.2 million over the next three years for a teacher quality enhancement programme.[38]

45. The Guam Public School System receives the largest portion of government revenues. According to the Governor, during 2005, his Administration invested $14 million towards purchasing new textbooks for schoolchildren and 69 new school buses, for a total of 170 school buses. He also noted that, for the second consecutive year, the schoolchildren of Guam have raised their national test scores.[21]

46. Starting in the summer of 2006, students will be able to study at the new School of Business and Public Administration of the University of Guam and the new Multi-Purpose Auditorium and Technology Center of the Guam Community College. Construction of the projects required an investment of some $170 million.

D. Public health

47. Life expectancy of Guamanians is 75.34 years for male and 81.64 years for female.[3] The major health facility in Guam and the Federated States of Micronesia, the Guam Memorial Hospital, is owned by the Government and has 192 beds, including 159 beds for acute care. The United States Naval Hospital serves military personnel and dependents as well as veterans. The Guam Department of Public Health operates about a dozen medical and dental clinics.[2]

48. A health-care reform law, which entered into force in May 2004, requires that residents who rely on the government programme for the medically indigent go to one of two regional public health-care clinics instead of private health-care providers. There is concern in the medical community that the new structure penalizes patients and other health-care providers and might result in long waits at clinics and overcrowding in hospital emergency rooms.[39]

49. In his 2006 State of the Island Address, the Governor noted that renovation of the Northern Public Health Center continued in order for it to be able to provide greater access to care for uninsured and underinsured Guam residents. During the review period, the Guam Administration increased by 50 per cent its temporary assistance to needy families.[21]

50. In February 2006, President Bush signed into law the Deficit Reduction Act of 2005, providing Guam with an additional $7.5 million in Medicaid funding for the

fiscal years 2005/2006. The funding will be put towards health care for the needy.[40] In 2005, the United States Congress awarded the University of Guam, School of Nursing, Social Work and Health Sciences, a grant of $238,080 to expand the capacity of the learning environment of the nursing programme.[41]

E. Housing

51. According to the Guam Delegate to Congress, Madeleine Bordallo, the Territory is faced with increasing numbers of homeless people. In order to alleviate that problem, in 2005 the United States Department of Housing and Urban Development awarded $837,820 to the Guam Housing and Urban Renewal Authority as part of the Continuum of Care — Homeless Assistance Awards programme. The programme provides funding for a range of assistance to homeless persons, including transitional housing, permanent housing and a variety of supportive services.[42]

F. Immigration

52. A major issue in the federal Government's relations with Guam is migration from the Freely Associated States of the Marshall Islands, Micronesia (Federated States of) and Palau. The Compact of Free Association Act of 1986, which established the relationship between the United States and the Federated States of Micronesia, and the Marshall Islands, authorized unrestricted migration from those Pacific island nations to the Territories and possessions. The Act enabled citizens of the Freely Associated States to enter Guam and to engage lawfully in occupations as non-immigrant aliens.[43] Those immigrants and their American-born children have settled in Guam, Hawaii and the Northern Mariana Islands, which has strained the resources of recipient States and Territories.

53. In order to reimburse Guam, the other Territories and Hawaii for the cost of providing Government services for regional immigrants, the federal Government has issued Compact-impact funding. In December 2003, the Compact of Free Association Amendments Act of 2003 was passed, renewing the original Compact of 1986 for another 20 years. Additional Compact-impact reimbursement is authorized if impact costs rise above the mandatory appropriation of $30 million per year. An estimated $12 million to $14 million in annual funding is expected for Guam. At the same time, at the request of the Governor of Guam, the President is authorized to release, reduce or waive, in whole or in part, any amounts owed by the Government of Guam to the United States Government as an offset for past Compact-impact costs that were not reimbursed.

54. A request by the Governor of Guam to the President of the United States to grant federal debt relief to Guam in the order of $200 million was rejected in January 2005. The request was made under a federal law passed in December 2003 allowing the President the option of granting debt relief to offset the cost of providing Government services to regional immigrants. Nevertheless, in his budget proposal for the fiscal year 2006, the President announced that Guam would receive $14.2 million for that purpose.[44] The Compact-impact allocation to Guam of $14.2 million will remain the same for 2007.[13]

55. In addition, the immigration policies currently applied to Guam have resulted in a considerable increase in migration from countries, particularly the Philippines, to Guam. The 2000 census indicated that, while the Chamorro population stood at 65,243, the non-Chamorro population was 86,798.

G. Human rights and related issues

56. There have been no further developments since the issuance of the 2003 working paper (A/AC.109/2003/15).

VIII. Environment

57. Guam continues to experience environmental problems related to the United States occupation during the Second World War (see A/AC.109/2001/4, para. 83 and A/AC.109/2005/7, para. 67). In January 2002, the Navy agreed to pay $42,000 in fines and to spend $380,000 to improve its waste management, after the United States Environmental Protection Agency found that the Navy Public Works Center had handled hazardous waste poorly in the year 2000.[44] In October 2004, the Washington-based Board of Radiation Effects Research Committee started to examine possible radiation exposure Guam residents might have suffered as a result of the United States nuclear tests in the Marshall Islands in the 1950s.[45]

58. In April 2005 the Guam Delegate to the United States Congress, Madeleine Bordallo, welcomed the recommendation of the Committee to Assess the Scientific Information for the Radiation Exposure Screening and Education Program that all Americans should be given the same consideration when it comes to compensation for exposure to radiation from United States nuclear testing — including the people of Guam. According to Congresswoman Bordallo, that marks a significant departure from the current compensation programme, which uses geographic, rather than scientific, criteria.[46]

59. In 2002, the United States Fish and Wildlife Service decided to designate 25,000 acres of Guam, about 19 per cent of the island, a critical habitat for the island's endangered bird and bat species. The land, which mostly belongs to the military, did not change ownership, but all federally funded land projects have to be reviewed to ensure that they do not affect species' native habitat. In October 2004, the United States Fish and Wildlife Service also decided to designate 6,409 acres of land a critical habitat for three bat species.[47]

IX. Relations with international organizations and entities

A. United Nations system

60. There have been no further developments since the issuance of the 2003 working paper (A/AC.109/2003/15).

B. Regional organizations and entities

61. Guam is a member of the Secretariat of the Pacific Community, a 26-member organization dedicated to providing technical advice, assistance, training and research to promote the development of its members.

X. Future status of the Territory

A. Position of the territorial Government

62. On 2 November 2004, Guam was scheduled to hold a plebiscite on self-determination to determine the future political status of the island. The plebiscite was postponed, primarily because eligible voters had not been identified and registered.[48] Since then the issue of the political status of the island has not been further addressed.

B. Position of the administering Power

63. The administering Power has not made a statement on this matter since the 72nd plenary meeting of the General Assembly on 9 December 2003 (see A/58/PV.72). At that meeting, the representative of the United States said that the United States could not support the draft resolution (A/58/L.21) on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples because, by adopting a narrow definition of decolonization, the draft resolution failed to take into account the complex reality of Non-Self-Governing Territories. For the United States, the very term "non-self-governing" seemed inappropriate for Territories able to establish their own Constitution, elect their own public officers, have representation in Washington, D.C., and choose their own economic path.

64. The United States representative further noted that the United States Government was fully supportive when countries chose independence and was proud to welcome them as equal and sovereign partners. In the case of Territories that did not choose independence, however, the United States also supported the right of people of those Territories to a full measure of self-government, including the rights to integration and free association. The United States expressed the view that the world encompassed a variety of peoples, places and political circumstances, and that richness did not allow for just one path. It believed that a single standard of decolonization should not be applied to every Territory, and it called upon all Member States to respect the choices made by residents of Non-Self-Governing Territories.

65. In conclusion, the representative said that the United States looked forward to a significant dialogue with the Committee of 24 in 2004, and that it was the Government's hope that all parties would cooperate to achieve a reduction in the number of Non-Self-Governing Territories.

C. Consideration by the United Nations

66. On 8 December 2005, the General Assembly adopted resolutions 60/117 A and B without a vote. Section VI of resolution 60/117 B is devoted specifically to Guam.

Notes

[1] The information contained in the present working paper was derived from information transmitted to the Secretary-General by the Government of the United States under Article 73 *e* of the Charter of the United Nations, in February 2006, as well as from published sources, including Internet sites.

[2] www.doi.gov.oia.

[3] Central Intelligence Agency, The World Factbook, Guam (see www.cia.gov).

[4] Bank of Hawaii, *Guam Economic Report*, October 2003 (see www.boh.com).

[5] United States Department of the Interior, Office of Insular Affairs, *Fact Sheet*, 1988.

[6] *Pacific Islands Report*, 2 February 2006.

[7] Ibid., 9 February 2006.

[8] Information transmitted to the Secretary-General by the Government of the United States under Article 73 *e* of the Charter of the United Nations, in February 2006.

[9] *Pacific Daily News*, 13 October 2004 (see www.guampdn.com); press release, "President signs Guam Judicial Bill into law", 31 October 2004 (see www.house.gov/bordallo).

[10] www.kuam.com/decision2004/results.

[11] *Governing Guam: Before and After the Wars*, Guam Political Status Education Coordination Commission, Hagåtña, Guam, 1994.

[12] *Pacific Daily News*, "Bill 363 approved to dodge total shutdown", 2 October 2004; and "Agency shutdown loom", 30 September 2004 (see www.guampdn.com).

[13] www.house.gov/bordallo.

[14] February 2006 (see www.doi.gov/oia).

[15] *Pacific Daily News*, 10 February 2006 (see www.guampdn.com).

[16] Ibid., 31 March 2005 (see www.guampdn.com).

[17] "Guam" (see www.encarta.com).

[18] *Regional Surveys of the World: The Far East and Australasia 2005, 36th Edition*, Europa (Taylor and Francis Group), London and New York.

[19] United States Department of the Interior, Office of Insular Affairs, "Secretary's Conference on Business Opportunities in the Islands", 23 September 2004 (see www.businessopportunitiesconference.com).

[20] *Pacific Daily News*, "Tourism scores with sports", 18 January 2004 (see www.guampdn.com).

[21] State of the Island Address, 22 February 2006 (see www.guamgovernor.net).

[22] Congressional Address, by Madeleine Bordallo, 17 January 2006 (see www.house.gov/bordallo).

[23] Press release of Congresswoman Bordallo, 10 August 2005 (see www.house.gov/bordallo).

[24] *Pacific Daily News*, 10 December 2001 (see www.guampdn.com).

[25] Ibid., Year in Review 2002, "Water Contamination, Pressure Woes" (see www.guampdn.com).

[26] *Pacific Magazine*, 7 December 2005 (see www.pacificmagazine.net).

[27] Press release, "President Bush Sends Congress FY 2006 Budget Proposal", 7 February 2005 (see www.house.gov/bordallo).

[28] *Pacific Daily News*, 20 December 2005 (see www.guampdn.com).

[29] Press release of Congresswoman Bordallo, 19 December 2005 (see www.house.gov/bordallo).

[30] State of Our Island Address by Felix Camacho, Governor of Guam, 4 February 2004.

[31] *Marianas Variety*, 8 November 2005 (see www.mvariety.com).

[32] *Marianas Variety*, 3 March 2006 (see www.mvariety.com).

[33] Press release of Congresswoman Bordallo, 24 May 2005 (see www.house.gov/bordallo).

[34] Ibid., 17 May 2005.

[35] Ibid., 9 September 2005.

[36] *Marianas Variety*, 7 February 2006 (see www.mvariety.com).

[37] *Pacific Daily News*, 30 January 2002 (see www.guampdn.com).

[38] Press releases of Congresswoman Bordallo, 1 April and 31 March 2005 (see www.house.gov/bordallo).

[39] *Pacific Daily News*, 13 October 2004 (see www.guampdn.com).

[40] Press release of Congresswoman Bordallo, 8 February 2006 (see www.house.gov/bordallo).

[41] Ibid., 20 April 2005.

[42] Ibid., 26 January 2005.

[43] United States Department of the Interior, Office of Insular Affairs, Report on the State of the Islands, 1999, chap. 4.

[44] *Pacific Daily News*, "White House denies request for debt relief", 1 January 2005 (see www.guampdm.com); press release of Congresswoman Bordallo, "President Bush Sends Congress FY 2006 Budget Proposal", 7 February 2005 (see www.house.gov/bordallo).

[45] www.hawaiipublicradio.org, 11 October 2004.

[46] Press release of Congresswoman Bordallo, 28 April 2005 (see www.house.gov/bordallo).

[47] United States Department of the Interior, Fish and Wildlife Service, Federal Register, vol. 69, no. 208.

[48] *Pacific Daily News*, 12 September 2004 (see www.guampdn.com).

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Gibraltar

Working paper prepared by the Secretariat

Contents

		Paragraphs	*Page*
I.	General	1–2	3
II.	Political developments	3–10	3
	A. General	3–6	3
	B. General elections	7	4
	C. Recent developments	8–10	4
III.	Economic conditions	11–29	5
	A. General	11–12	5
	B. Public finance	13–16	5
	C. Trade	17	6
	D. Banking and finance	18–23	6
	E. Transportation, communications and utilities	24–28	7
	F. Tourism	29	8
IV.	Social conditions	30–35	8
	A. Labour	30	8
	B. Human rights	31	8
	C. Social security and welfare	32	9
	D. Public health	33	9

06-27910 (E) 040406

E. Public education 34 9

F. Crime and crime prevention 35 9

V. Consideration by the United Nations 36–39 10

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples 36–37 10

B. Special Political and Decolonization Committee (Fourth Committee) 38 10

C. Action by the General Assembly 39 10

VI. Future status of the Territory 40–61 11

A. Position of the administering Power 40–44 11

B. Position of the territorial Government 45–54 12

C. Position of the Government of Spain 55–58 14

D. United Kingdom-Spanish negotiations 59 15

E. United Kingdom-Spanish-Gibraltarian negotiations 60 15

F. United Kingdom-Gibraltarian discussions 61 16

I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.8 square kilometres, and according to Spain it is 4.8 square kilometres. In 2004, Gibraltar observed the anniversary of 300 years under British rule.

2. The latest census of Gibraltar, taken on 12 November 2001, assessed the Territory's civilian population at 27,495, of which 22,882 were Gibraltarians, 2,627 other British subjects, 961 Moroccans and 1,025 of other nationalities. According to the administering Power, the population of Gibraltar in 2003 was 28,605, with 23,069 Gibraltarians, 3,270 other British subjects and 2,266 of other nationalities.

II. Political developments

A. General

3. For detailed information on Gibraltar's political and legal system and on the British Overseas Territories Bill, which confers citizenship on citizens living in territories under British administration, as well as for information concerning Gibraltar's military installation, see the 2005 working paper (A/AC.109/2005/11, paras. 3-5 and paras. 9 and 10, respectively).

4. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",[2] presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter. The Chief Minister of Gibraltar, Peter Caruana, said that the object of the exercise had been to achieve a constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect that. (See A/AC.109/2002/11, para. 6, for details of the proposed constitution, as reported by the local media.)

5. The Chief Minister submitted the constitutional reform proposals formally to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on 22 December 2003 and suggested that the two meet informally to discuss the proposals and the way forward.[3] The Secretary of State acknowledged the importance of those proposals to Gibraltar and said that they would receive the most careful consideration. Negotiations began in 2005 aimed at modernizing Gibraltar's Constitution in a way that Gibraltar would remain British but in a non-colonial relationship with the United Kingdom. The discussions were held exclusively between the United Kingdom and a cross-party representation from Gibraltar, led by the Chief Minister and including the leader of the Opposition, Joseph Bossano. The results are expected to be known during the first half of 2006.[4]

6. For the first time ever, Gibraltarians took part in the European Parliamentary Elections in June 2004. According to the administering Power, Gibraltar was considered to be part of the South West England region for electoral purposes.[5]

B. General elections

7. The last general elections in Gibraltar were held on 27 November 2003. The incumbent Gibraltar Social Democratic Party obtained 51 per cent of the vote, followed by the Gibraltar Socialist Labour Party, which, in alliance with the Liberal Party, obtained 40 per cent of the vote. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar. Joseph Bossano continues as Leader of the Opposition.

C. Recent developments

8. As mentioned in previous working papers, the negotiations between the United Kingdom and Spain on the subject of Gibraltar, relaunched in July 2001 in the framework of the Brussels Process, did not continue during 2005 (see A/AC.109/2003/3, paras. 52-54, A/AC.109/2004/7, paras. 51-53, and A/AC.109/2005/11, paras. 52-55). Instead, a forum for dialogue was established, separate from the Brussels Process, with Gibraltar participating in its own right. The framework of the talks was outlined in a joint press release by the Spanish Ministry for Foreign Affairs, the British Foreign and Commonwealth Office and the Government of Gibraltar dated 16 December 2004:

> "On 27 October 2004, the British and Spanish Ministers, Jack Straw and Miguel Angel Moratinos, made a joint statement in Madrid, on which the Chief Minister of Gibraltar, Peter Caruana, had been consulted and has separately expressed his agreement. Accordingly and without prejudice to their respective positions, the Governments of Spain and the United Kingdom and Gibraltar now confirm the establishment of a new three-sided forum for dialogue on Gibraltar, separate from the Brussels Process."[6]

9. In 2005 priority was given to that forum, discussing matters affecting people in and around Gibraltar. In the Trilateral Forum, dialogue is established on an open-agenda basis, each of the three parties having its own separate voice. Any decisions reached within the Forum must be agreed by all three participants. The meetings have been led so far by the directors for Europe of the Spanish Ministry of Foreign Affairs and the United Kingdom Foreign Office, José Pons and Dominick Chilcott, respectively, as well as by the Chief Minister of Gibraltar, Peter Caruana. Ministerial meetings have not yet taken place. The subjects covered include, inter alia, the airport, telecommunications, Spanish pensions, and border issues. For additional information see section VI.E below.

10. The positions of the administering Power, the territorial Government and the Government of Spain regarding the Trilateral Forum and political developments in 2005 are reflected in section VI of the present report.

III. Economic conditions

A. General

11. Gibraltar has no known natural resources and lacks agricultural land. In the past the economy was largely dependent on Ministry of Defence expenditures, but with the downsizing of the military base, the economy has become focused on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The currency of Gibraltar is the pound sterling. According to the administering Power, the gross domestic product (GDP) of Gibraltar in 2002/2003 was £507.2 million, and per capita GDP was £17,770; the economy grew by 8 per cent in real terms. Inflation in October 2005 was running at an annual rate of 3.2 per cent.[7]

12. In June 2005, the Chief Minister stated at the Parliament's budget session that Gibraltar's economy was in "excellent" health. The recurrent revenue and expenditure budget for 2004 had a surplus of £2.9 million, while public debt remained at 17 per cent of GDP. Government reserves (at £51 million) and revenues stood at record levels.[8]

B. Public finance

13. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2005 totalled £181.6 million, and departmental expenditure amounted to £149.8 million. The main sources of Consolidated Fund revenues were income tax, which totalled £75.8 million; import duties, which totalled £30.3 million; and general rates and salt water charges, which totalled £12.6 million. The main Consolidated Fund areas of expenditure for the period April 2004 to March 2005 were as follows: health and civil contingency, £26.3 million; education, £20.6 million; social and civic affairs, £18.1 million; environment, £9.4 million; housing, buildings and works, £8.9 million; utilities, £8.6 million; Chief Minister's office, £8.3 million; police, £8.2 million; treasury, £5.4 million; technical services, £5.3 million; customs, £4.1 million; tourism, £3.1 million; fire service, £3.1 million; postal services, £2.3 million; and port, £2.3 million.

14. Income tax is charged for the year of assessment running from 1 July in one calendar year to 30 June in the next on the basis of the income of the preceding year, except for income from employment or pension, which is charged on the basis of the income for that current year. The income tax rates applicable to individuals resident in Gibraltar range from 17 per cent on the first £4,000 of taxable income to 45 per cent after the first £15,000 (see A/AC.109/2001/10, para. 16, for details of income tax and exemptions). In his 27 January 2005 speech on the economy, the Chief Minister stated that the all-time high in Government revenue had allowed investment of more than £150 million over eight years in publicly funded capital projects. This in turn had made it possible to increase recurrent public spending in public services.

15. The British Foreign Office Minister revealed in March 2005 that the United Kingdom spends an estimated £80 million annually in Gibraltar. The offices of the Governor and Commander-in-Chief, Sir Francis Richards, required £1,268,000

(£1,187,000 running costs and £81,000 capital expenditure) in the financial year 2004-2005. Core Ministry of Defence costs are £78,491,000 (£64,698,000 operating costs and £13,793,000 capital expenditure). The Foreign and Commonwealth Office is also responsible for the Gibraltar Project Fund which has an allocation of £400,000 in financial year 2004-2005. Foreign Office Minister Denis MacShane also stated that the United Kingdom Government was committed to helping Gibraltar maintain its prosperity through open access to markets in goods and service.[9]

16. According to the administering Power, the level of private sector capital investment was around £44 million. Among last year's investments is the £1 billion coastline development project by MCB Ltd., which is the largest inward investment in Gibraltar's history.[10]

C. Trade

17. As reported in the 2005 working paper (A/AC.109/2005/11, para. 15), figures for 2003 show that total imports amounted to £715.5 million (up from £609.7 million in 2002) and total exports to £508.5 million (up from £428.7 million in 2002). In 2004, total imports amounted to £643.2 million, while total exports stood at £437.6 million. In 2005, the administering Power reported that nearly 28 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships. Import controls did not change during the period under review.

D. Banking and finance

18. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory. At the end of 2004, there were 18 banks authorized to conduct banking business in Gibraltar. As at 31 December 2003, there were also some 8,464 fully paid companies (down from 8,620 in December 2002) registered under the Companies (Taxation and Concessions) Ordinance. These companies pay a fixed annual tax, irrespective of profits made and whether or not their profits are received in the Territory.

19. A report issued in June 2000 by the Organization for Economic Cooperation and Development (OECD) included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.[11] On 28 February 2002, the Gibraltar Government agreed in writing to implement the principles required by OECD. On 14 March 2002, OECD announced that Gibraltar had made commitments to transparency and to implement an effective exchange of tax information with OECD countries by the end of 2005, and would thus be removed from the list of uncooperative tax havens on 31 December 2005.[11]

20. An independent review into Gibraltar's Financial Services Commission, published by the British Foreign and Commonwealth Office in January 2005,

concluded that the Commission had worked hard to ensure that supervision in Gibraltar complied with European Union obligations and, where those applied, established and implemented standards that match those required by legislation and practice in the United Kingdom.[12]

21. Despite Gibraltar's efforts to ensure successful regulatory systems, the Gibraltarian press reported that a major money-laundering crackdown in Marbella, Spain, in March 2005 had revealed a complex web of over 1,000 companies, many of which were registered in Gibraltar.[13]

22. In January 2005, the executive arm of the European Union ordered the United Kingdom to phase out tax breaks for offshore companies based in Gibraltar after finding the arrangement not in accordance with European Union competition rules. The European Commission said in a statement that the tax advantages were clearly selective, were financed from State resources and were liable to distort competition. The European Commission also pointed out that the regime did not satisfy the criteria set out in European Union law, under which State aid may be authorized. In February 2005, the administering Power announced its decision to abolish the Gibraltar Exempt Company Tax Regime by 2010.[14]

23. That decision having been taken, the number of companies benefiting from the scheme will be capped at current levels and no new entrants will be allowed as from July 2006. Referring to those developments, the Chief Minister of Gibraltar pointed out that while the agreement with the European Union did not contain everything that Gibraltar had wanted, it delivered sufficient certainty and stability.[15]

E. Transportation, communications and utilities

24. According to the administering Power, arrivals in Gibraltar are by land, comprising mainly day visitors arriving from Spain; by air, primarily from the United Kingdom and by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships. Passenger arrivals for 2005 were as follows: 7,434,420 arrivals by land; 188,814 cruise visitors; 172,695 air arrivals and 6,787 ferry arrivals.

25. Regarding road transportation in and out of Gibraltar, in recent years the border issue has been raised by the United Kingdom in contacts with the Spanish authorities (see A/AC.109/2001/10, para. 22, A/AC.109/2002/11, para. 20 and A/AC.109/2004/7, para. 20). During the trilateral negotiations, the Spanish Government announced its plans to improve the flow of vehicular traffic across the fence/frontier and to improve customs and immigration control.[16]

26. There are regular airline services linking Gibraltar to the United Kingdom and Morocco. In recent years, the issue of Gibraltar's airport was reported to be holding up European Commission aviation agreements on a "single European sky".[17] For a summary of related developments, see the 2004 working paper (A/AC.109/2004/7, para. 21). On 11 December 2003, the Joint Conciliation Committee of the European Parliament and the Council approved the joint text of the framework regulation for the creation of the Single European Sky. Paragraph 5 of article 1 of that instrument suspends application of the regulation and certain measures for the airport of Gibraltar until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December

1987 come into operation. The Governments of Spain and the United Kingdom are expected to inform the Council of the date of entry into operation.[18] All parties involved have expressed the hope that during meetings of the Trilateral Forum they will reach agreement on improvements concerning expanded use of Gibraltar's airport (see para. 8 above).

27. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. According to the administering Power, Spain removed restrictions on cruise ships sailing directly between Gibraltar and Spanish ports, and also removed the ban on Gibraltar-bound civilian air flights diverting, in the event of bad weather, to nearby Spanish airports.[5]

28. For developments relating to telephone communications and the international dialling code for Gibraltar, see the 2004 working paper (A/AC.109/2004/7, paras. 23 and 24). The issue of improved telecommunications for Gibraltar and the Campo is also on the agenda of the Trilateral Forum, including the possibility of increasing the number of Gibraltar telephone numbers accessible from the Spanish network and of facilitating mobile roaming.[16]

F. Tourism

29. The total number of visitors that arrived in Gibraltar in 2004 was 7.6 million, compared to 7.8 million in 2003. There were 61,710 hotel arrivals in 2004, a slight decrease over 2003, in which 61,743 hotel arrivals were registered.

IV. Social conditions

A. Labour

30. According to the administering Power, the 2004 employment survey placed the number of employees in Gibraltar at approximately 15,994, compared to 15,419 in 2003. In his statement at the budget session in June 2005, the Chief Minister pointed out that 575 additional new jobs were created in 2004, an increase of 3.7 per cent. At the end of 2004, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 3,024; public administration and defence, 2,923; building and construction, 2,141; retail trade, 1,909; and medical and health services, 1,326. In his June 2005 budget speech to Parliament, the Chief Minister stated that the number of jobs in the economy was at an all-time high in 2005 and still growing, while the unemployment rate was at a record low, at less than 2 per cent.[8]

B. Human rights

31. For information on fundamental rights and freedoms granted by the Gibraltar (Constitution) Order of 1969, see the 2005 working paper (A/AC.109/2005/11, para. 28).

C. Social security and welfare

32. For details of the contributory schemes of the Social Security system, see A/AC.109/2001/10, paragraph 40.

D. Public health

33. The Gibraltar Health Authority is the organization responsible for providing health care in Gibraltar. It operates a group practice medical contributory scheme and gives registered persons access to free medical treatment (for a description of the available medical facilities, see A/AC.109/2001/10, paras. 42 and 43). The expenditure of the Gibraltar Health Authority for the period from 1 April 2004 to 31 March 2005 was £46.6 million. The new 200-bed St. Bernard's Hospital at Europort, representing an investment of £55 million, opened in February 2005. The Minister for Health, Ernest Britto, said that the new state-of-the-art hospital heralded a new era in health care in Gibraltar.[19]

E. Public education

34. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2005 was £20.6 million. An £11 million programme of major improvements to Government schools in 2004 was completed in 2005 with a further investment of £1 million. As at the end of 2005, there was a total of 5,321 children enrolled in Government schools, including Government nurseries. There is free compulsory education for all entitled children between the ages of 5 and 15. There are 13 primary schools — 11 Government-run, 1 private and 1 services school — with a total of 3,723 students enrolled. There were also four single-sex secondary schools — two Government-run schools, with a total of 1,997 students, and two private schools. There is also a technical and vocational college with 380 students enrolled. The number of teachers employed in Gibraltar during the 2004/2005 academic year was 349. All tertiary education is sponsored, and students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. In 2005, 497 Gibraltarians were reportedly pursuing higher education studies in the United Kingdom.

F. Crime and crime prevention

35. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police. According to data provided by the administering Power, from January to December 2005, 989 persons were arrested for minor offences, such as those related to liquor, disorderly conduct and immigration violations. During the same period, 992 persons were arrested for serious crimes, such as those related to violence against the person, sexual offences, burglary and drugs.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

36. A representative of Spain attended the Caribbean regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism, held at Canouan, Saint Vincent and the Grenadines, from 17 to 19 May 2005. Joseph Bossano, Leader of the Opposition in Gibraltar, attended as an observer.

37. The Special Committee discussed the question of Gibraltar at its 4th meeting, on 7 June 2005 (see A/AC.109/2005/SR.4), and had before it a working paper concerning the Territory (A/AC.109/2005/11). Statements were made by the representative of Spain, the Chief Minister of Gibraltar, Peter Caruana, and by the Leader of the Opposition in Gibraltar, Joseph Bossano. On the proposal of the Chairman, the Committee decided to continue consideration of the question at its next session and, in order to facilitate consideration of the question by the Special Political and Decolonization Committee (Fourth Committee), to transmit the relevant documentation to the General Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

38. The Fourth Committee considered the question of Gibraltar at its 3rd meeting, on 6 October 2005 (see A/C.4/60/SR.3). At that meeting, statements were made by the representative of Spain, Juan Antonio Yañez-Barnuevo, the Chief Minister of Gibraltar, Peter Caruana and the petitioner, Joseph Bossano, Leader of the Opposition in Gibraltar. At its 2nd meeting, on 5 October, the Fourth Committee had heard a statement by the representative of the United Kingdom regarding the 10 listed Non-Self-Governing Territories that are administered by the United Kingdom (see A/C.4/60/SR.2). At its 6th meeting, on 11 October, the Fourth Committee adopted a draft decision on the question of Gibraltar (A/C.4/60/L.3) without a vote.

C. Action by the General Assembly

39. At its 62nd plenary meeting, on 8 December 2005 (see A/60/PV.62), the General Assembly, on the recommendation of the Fourth Committee, adopted decision 60/525 without a vote. The decision, including a modification introduced by the United Kingdom and Spain in the form of a reference to the aspirations of the Gibraltarians, reads as follows:

> "The General Assembly, recalling its decision 59/519 of 10 December 2004 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels on 27 November 1984 and in Madrid on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite forum for dialogue on Gibraltar, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:

(*a*) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the 27 November 1984 statement, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;

(*b*) Welcomes the establishment of a new trilateral forum for dialogue on Gibraltar, under the statement of 16 December 2004, separate from the Brussels Process."

VI. Future status of the Territory

A. Position of the administering Power

40. In his statement at the 2nd meeting of the Fourth Committee, held on 5 October 2005, at the sixtieth session of the General Assembly (see A/C.4/60/SR.2), the representative of the United Kingdom said the consultation process between his Government and the 10 Non-Self-Governing Territories under its administration was continuing. The seventh annual meeting of the Overseas Territories Consultative Council would be held in London in October 2005. The Council provided a forum for dialogue between democratically elected chief ministers and their equivalents from the Territories and United Kingdom Government Ministers on a range of issues including the relationship between the United Kingdom and its Territories, constitutional modernization, good governance, environmental matters and the United Kingdom's international obligations.

41. The United Kingdom Government welcomed the progress that was being made in the constitutional review process; there had been useful discussions between his Government and representatives of Gibraltar, Montserrat and the Turks and Caicos Islands. In Saint Helena, a consultative poll had rejected a revised draft constitution and that Territory was currently considering its next steps. Extensive discussions had been held with the Independence Commission set up in Bermuda to look into the implications of any move towards independence; at the Commission's request, his Government had drafted a paper setting out its position on a number of issues, which was currently being studied by the Government of Bermuda.

42. His Government, he pointed out, continued to support capacity-building projects and to promote sustainable development and good governance in the Non-Self-Governing Territories under its administration. The Overseas Territories Environment Programme continued to support the implementation of the environment charters for the Territories. His Government likewise continued to support the Territories under its administration in their efforts to strengthen relations with the European Commission and to improve access to the trade and economic and developmental aid provisions of the European Union — Overseas Countries and Territories Overseas Association Decision. It had also continued its informal cooperation with the Special Committee; in that context a visit had been made to Bermuda with a view to consider progress towards that Territory's de-listing.

43. In a separate communication regarding the Overseas Territories Consultative Council held in London in October 2005, the United Kingdom Government noted that there was useful discussion on the relationship between the United Kingdom

and the Territories and progress on constitutional modernization, which continued to take account of the Territories' particular circumstances. Other areas covered were external relations, good governance, law enforcement, financial services, transport, sustainable development and relations with the European Union. The Department of International Development organized round tables in association with the Overseas Territories Consultative Council on human rights and disaster management.

44. Speaking in exercise of his right of reply at the 3rd meeting of the Fourth Committee, held on 6 October 2005 (see A/C.4/60/SR.3), the representative of the United Kingdom welcomed the remarks by the representative of Spain, saying that issues related to Gibraltar could only be resolved in a climate of trust. The Trilateral Forum on Gibraltar and the positive progress of practical issues that the representative of Spain had described were also welcome. The United Kingdom had no doubts about its sovereignty over Gibraltar and would stand by its commitments to its people.

B. Position of the territorial Government

45. During 2005 the Chief Minister of Gibraltar, Peter Caruana, made numerous statements on the status of Gibraltar and the Territory's position with respect to the Trilateral Forum between Spain, the United Kingdom and Gibraltar, as well as regarding the negotiations between the United Kingdom and Gibraltar on constitutional reform on the other.

46. The Chief Minister addressed the Special Committee of 24 on 7 June 2005 (see A/AC.109/2005/SR.4) and the Fourth Committee on 6 October 2005 (see A/C.4/60/SR.3), impressing upon them Gibraltar's aspirations for self-determination.

47. Speaking to the Fourth Committee, the Chief Minister observed that, stripped of historical and political complications, the question of Gibraltar was really a very simple one. Over the past 1,300 years or so, Gibraltar had been Moorish for 727 years, Spanish for 266 years, and a British possession and then colony for 301 years. The Territory already enjoyed a very large measure of self-government, having its own democratically elected Government responsible for all matters except external affairs, defence and internal security, and its own Parliament that legislated in respect of all matters. Everyone, including Spain, agreed that Gibraltar should be decolonized. The single issue at stake was whether that decolonization should take place in accordance with the freely expressed wishes of the people of Gibraltar, or whether — as Spain maintained — it should be achieved by the handover of sovereignty by the administering Power, the United Kingdom, to Gibraltar's neighbour, Spain, in negotiations conducted bilaterally between them.

48. According to Mr. Caruana, Spain asserted that it was United Nations doctrine that Gibraltar's decolonization must be achieved by applying not the principle of self-determination but the principle of territorial integrity, namely, by the handover of Gibraltar's sovereignty from the United Kingdom to Spain, regardless of the wishes of the people. For the people, that would be not decolonization but recolonization. Such an undemocratic handover should be anathema to all countries governed by the rule of law. Nor could it be accepted as United Nations doctrine, for the principle of territorial integrity related properly only to the disintegration of existing States and not to the decolonization of listed Non-Self-Governing

Territories. That was the meaning of the concept of territorial integrity in the Declaration on the Granting of Independence to Colonial Countries and Peoples, and especially in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970) which, after giving classic statements of the two principles of self-determination and territorial integrity, went on, in the penultimate paragraph of the section on the principle of equal rights and self-determination of peoples, to give the only United Nations statement of the correct interrelationship between those two principles. It was self-evident, under the terms of the Declaration, that Spain was not possessed of a Government representing the people and Territory of Gibraltar, and that, since Gibraltar was not a part of Spain and would not be seceding from it, its decolonization would not result in the disintegration of Spain. The principle of territorial integrity therefore did not override the principle of self-determination in Gibraltar's case.

49. The Chief Minister noted that there was a further confusion by Spain of two other distinct issues: decolonization and sovereignty. Spain asserted that Gibraltar could not be decolonized by applying the principle of self-determination because of the existence of a so-called sovereignty dispute over the Territory, a conceptual misconception that had no foundation in United Nations doctrine or international law. To solve a sovereignty dispute relating to a Territory against the wishes of its people was not a valid means of decolonization. United Nations doctrine maintained that self-determination was an inalienable right and a basic and fundamental human right. Inalienable rights could not be overridden by the mere existence of a territorial sovereignty claim. Sovereignty disputes had often survived decolonization of a Territory by self-determination, and did not stand in the way of decolonization. Such had been the position of the International Court of Justice as well, when, in its judgment on Namibia,[20] it had declared the principle of self-determination to be applicable to all Non-Self-Governing Territories regardless of demands for integration by an interested State. Regrettably, those clear statements in United Nations doctrine and international law had been misrepresented in the reports and recommendations of recent regional seminars held by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

50. The position of the people of Gibraltar themselves was that their homeland could be decolonized only through their exercise of their inalienable right to freely decide their own political future. If the Committee, or Spain and the United Kingdom, disagreed with that position, they were urged to refer the matter to the International Court of Justice for an advisory opinion. The Territory was currently engaged in constitutional talks with its administering Power, the United Kingdom, for the negotiation of a non-colonial constitution endowing the people of Gibraltar with the greatest possible measure of self-government. The expectation was that the talks would be concluded satisfactorily early in 2006.

51. For a decade his Government had decried the concept of bilateral negotiations about Gibraltar between its administering Power and the territorial claimant, Spain. The concept was wrong, because it was completely disrespectful of the rights of the people of the Territory, and ineffective, because nothing could be agreed to without their consent. Accordingly, he had repeatedly urged the Committee to modify its annual resolution on the question of Gibraltar to reflect the fact that in practice no

bilateral negotiations had been held since September 2002 and that the United Kingdom did not intend to resume them.

52. Gibraltar applauded the establishment of the new Trilateral Forum for Dialogue, separate from the so-called Brussels Process, for it had inaugurated a realistic and viable dialogue between all parties for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar, the district of Spain that bordered Gibraltar. Consequently, the Committee's resolution on the question should not perpetuate a fiction by focusing on the obsolete bilateral Brussels Process. At the very least, the resolution should include a full reference to the new trilateral process and eliminate pointless quotations from the text of the Brussels Declaration. The Government of Gibraltar would continue to participate constructively in the new tripartite process, in which all parties understood that the others had not changed their position on basic questions but were willing to continue working with mutual respect.

53. During his New Year message in January 2006, the Chief Minister pointed out that there would have to be concessions by all sides regarding the negotiation process with the United Kingdom and Spain within the Trilateral Forum. Mr. Caruana primarily hoped for a practical agreement to emerge which would make Gibraltar's airport more useful for the social and political development of people on both sides of the frontier, while fully safeguarding the political interests of all sides. The territorial Government of Gibraltar was not willing to make concessions to Spain on the issue of sovereignty, jurisdiction or control of the airport. Nor was Mr. Caruana prepared to allow Spanish officials to be present in Gibraltar, acknowledging that some tension was inevitable because of "serious disagreements on fundamental issues". However, the Chief Minister described what he considered "the sensible way forward", saying that "an intelligent and modern conduct of our interests and affairs is one that achieves both defence and promotion of our political rights and aspirations and other interests as a people on the one hand, and the best possible, mutually beneficial relations with our neighbour, Spain, on the other hand". According to Mr. Caruana, the Gibraltar Government would aim to bring normality into the lives of the people, which included resolving those problems with their neighbours that could be resolved, as well as establishing the best relations possible with Spain in general, and with the Campo and Andalucia in particular, that their disagreements would allow.

54. With regard to the negotiations on a reformed constitution between Gibraltar and the United Kingdom, the Chief Minister, during his New Year message in January 2006, noted that his Government's aim was to establish a modern, non-colonial constitutional relationship between Gibraltar and the United Kingdom. Under this constitutional reform there would be change to Sovereignty. For international legal and political purposes, Gibraltar would remain a non-independent, dependency of the United Kingdom. The Chief Minister was confident that the outcome of these Constitutional negotiations with the United Kingdom would be known during the first quarter of 2006.[5]

C. Position of the Government of Spain

55. Speaking at the 3rd meeting of the Fourth Committee on 6 October 2005 (see A/C.4/60/SR.3), the representative of Spain said that the new Trilateral Forum for

Dialogue, which worked with an open agenda, had held two meetings, in February and July 2005, in which the three participants — Spain, the United Kingdom and Gibraltar — had made progress on issues relating to the Territory's airport, fence/frontier, pensions and telecommunications, and on cooperation in environmental matters, culture and sports, and legal and police matters.

56. An important innovation in the Forum for Dialogue — separate from the Brussels Process — was the fact that all three participants spoke separately for themselves, on the basis of equal participation, and without prejudice to their constitutional status, including the fact that Gibraltar was not a sovereign, independent state. Furthermore, all Forum decisions were taken by consensus; and in the case of decisions properly taken bilaterally between Spain and the United Kingdom, the understanding was that the United Kingdom would not reach agreement without the consent of the Government of Gibraltar. Gibraltar's sovereignty would be one such issue to be handled bilaterally, although of course the aspirations and interest of the people of Gibraltar would be taken into account. The atmosphere of mutual confidence and cooperation that had been instituted meant that, as the Forum proceeded with its work, if consolidated, it would be possible to begin at the appropriate moment to consider a definitive solution to the question of Gibraltar.

57. A Joint Committee of the Government of Gibraltar and the Mancomunidad de Municipios del Campo de Gibraltar had also been established in 2004 to identify and carry out mutually beneficial projects.

58. In view of the foregoing, Spain could state that it was fulfilling the mandate given to it by the General Assembly in decision 59/519 of 10 December 2004, and that it stood ready to continue endeavouring to put an end to the dispute over Gibraltar.

D. United Kingdom-Spanish negotiations

59. As outlined above (see para. 8), priority in 2005 was given to the Trilateral Forum, separate from the Brussels Process, with Gibraltar participating in its own right.

E. United Kingdom-Spanish-Gibraltarian negotiations[5]

60. The Trilateral Forum met in Malaga, Spain, on 10 and 11 February 2005, in Faro, Portugal, on 8 and 9 July 2005, in Mallorca, Spain, on 10 and 11 October 2005 and in Kent, United Kingdom, on 21 and 22 February 2006. Among the main subjects discussed were the possibility of an expanded use of Gibraltar's airport, pensions of former Spanish workers employed in Gibraltar until 1969, improvements of telephone communications between Gibraltar and Spain by increasing the number of Gibraltar telephone numbers accessible from the Spanish network and by facilitating mobile roaming, cooperation in cross-border environmental questions, cultural and sporting matters affecting Gibraltar and the surrounding area, as well as police and judicial problems.[16] According to joint statements made after the meetings, the talks were held in a cordial atmosphere and significant progress had already been made. All three participants were hoping to

prepare a full ministerial meeting at some point in the near future, in which the results of these negotiations would be turned into political decisions.[5]

F. United Kingdom-Gibraltarian discussions

61. The Government of the United Kingdom has reiterated on several occasions that it remains committed to considering proposals for constitutional change in its Territories. Talks began in 2005 aimed at modernizing Gibraltar's Constitution so that Gibraltar would remain British but in a non-colonial relationship with the United Kingdom (see paras. 49-59 above).

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, in January 2006, as well as from official documents of the Government of Spain and published sources.

[2] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex

[3] Government of Gibraltar press release, "Chief Minister's New Year message", 1 January 2003.

[4] www.Gibraltar.gov.uk/int/political.asp.

[5] Information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, in January 2006.

[6] *El Pais*, Madrid, 22 December 2004; Agence France-Presse English Wire, 16 December 2004.

[7] *Panorama*, Caruana Speech, 26 January 2005 (www.Panorama.gi).

[8] *Gibraltar Chronicle*, Caruana Speech, 23 June 2005 (www.Chronicle.gi).

[9] *MercoPress*, 23 March 2005.

[10] Agence France-Presse English Wire, 25 January 2005.

[11] Organization for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.

[12] Foreign and Commonwealth Office press release, 20 January 2005.

[13] *Panorama*, 15 March 2005 (www.Panorama.gi).

[14] *Reuters*, 18 February 2005.

[15] Government of Gibraltar, press release, 18 February 2005.

[16] Joint statement following talks in Faro, Portugal, 8 and 9 July 2005 (www.gibraltar.gov.gi).

[17] *Reuters* and *El Pais*, 8 March 2001.

[18] European Union, Legislative Acts and Other Instruments, Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky.

[19] *Gibraltar Chronicle*, 10 February 2005 (www.Chronicle.gi).

[20] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.